

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**Criminal No. 2:09-00137**

**JOSEPH CLEVELAND FERRELL and  
SOUTHERN AMUSEMENT CO., INC.**

**Defendants.**

**ORDER**

On May 27, 2010, came the United States of America, by its counsel, Hunter Smith and Larry Ellis, Assistant United States Attorneys; Joseph C. Ferrell, by his counsel, Benjamin Bailey and Rodney Smith; Southern Amusement, by its counsel, Robert Allen and Pamela Deem; and the West Virginia Lottery, by its counsel, Katherine A. Schultz, Senior Deputy Attorney General, for the Status Conference previously scheduled by the Court. The Court was advised of the agreement reached by the Defendants and the Lottery to substantially narrow the scope and unanticipated burden placed on the Lottery by the Court's Order of March 1, 2010.

Specifically, the Defendants and the Lottery have agreed to limit the scope of the search for material responsive to the March 1, 2010 Order in the following ways:

1. Barring unforeseen circumstances, the Lottery shall produce all emails sent from or received by Carolyn Kitchen by **September 15, 2010**.

2. The Lottery shall produce all written policies and procedures related to overtime, after hours, or weekend work by **June 7, 2010**. The Lottery has represented that all responsive documents have been produced.

3. The Lottery shall produce all written policies and procedures related to the receipt and/or reporting of gifts or gratuities by **June 7, 2010**. The Lottery has represented that all responsive documents have been produced.

4. In regard to the fourth subject of the Court's March 1, 2010 Order compelling the production of certain electronic documents from the Lottery, the parties have agreed to the following:

a. Dates - The Lottery shall search emails for the time period of March 1, 2007 through November, 2007.<sup>1</sup>

b. Email boxes to be searched - To the extent the mailboxes of the following individuals have been maintained and are retrievable, the Lottery shall produce all existing emails contained in those mailboxes by **September 15, 2010**: Max Henry, Danny Johns, Carolyn Kitchen, Alvin Rose, Frank Stemple, John Thabet and Patsy Young-Greiner. The United States has expressed its belief that this request is beyond the scope of the original subpoena, but indicated that it has no objection to the production of these electronic documents.

c. Limited searches of certain individuals' email boxes - The Lottery shall conduct limited searches of email boxes for the following individuals: Steve Abbott, Bruce Adkins, Arnold Baldwin, Mark Basil, Chuck Bourne, Howard "Skip" Chain, Kris Chapman, Thomas "Butch" Chittum, Michele Clark, Steve Compston, Tim Connell, Geno DeMay, Tacy Donovan, Ernest Dotson, Gina Faber, Doug Fletcher, Revella Flynn, Barbara Galante,

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<sup>1</sup> Some material from February 2007 will be produced because the first March tape contains some February 2007 information. Additionally, any recoverable email attachments dating back to 2001 will be produced.

Charles Gibson, Thomas Grimm, Randy Hammond, Gene Herndon, Rich Holleron, Johnny Jackson, Patrick Legg, Dustin LaMar, Kenneth Leshon, Mary Lilly, John Long, Russell Lopez, Larry Lovejoy, Gary Kincaid, Timothy Koch, Kim Mayhew, Tim Mayle, Ray Moore, Jeff Neff, Kimberly O'Brien, Randy Olenick, Dan Olexia, Archie Quigley, Brian Rankin, Gary Reedy, Byron Salisbury, David Sidiropolis, Megan Salmon, Gregory Stevens, Jeffrey Thompson, James Townsend, Will Trainer, John Turley, Teri Young, Dwayne Wean, Terry Westfall, Buddy Whitley, Kristi Cook and Terri Martin. These email boxes will be searched for the following search terms: overtime, weekend, after hours, fix, approv, personnel polic, ethic, gratuit, code of conduct, service, gift, conflict, carolyn, kitchen, john, musgrave, glen, farrell, stemple, frank, mark, cantrell, max, henry, greg, dotson, greenspot, green spot, greene spot, melton, alvin, rose and thabet. Barring unforeseen circumstances, all documents contained in these mailboxes containing those search terms shall be produced by **September 15, 2010**.

d. Non-email electronic documents (excluding PDF documents) – The Lottery shall conduct searches of electronic documents maintained on backup tapes created on March 5, 2007 and November 6, 2007. While these searches can be conducted contemporaneously with the email search due to the Lottery's recent purchase of equipment, as the Court has been advised, the Lottery has encountered problems in writing the program to search these documents but will continue its efforts to develop a working program. If a program is successfully written, the Lottery will make a reasonable attempt to have the electronic search exclusive of the PDF search done on or before **September 15, 2010**.

e. PDF documents - The parties shall continue to work to find ways to reduce the Lottery's burden in producing PDF documents. If agreement can be reached regarding the production of PDF documents, the Lottery will endeavor to produce those documents.

f. To the extent practicable, the Lottery has agreed to produce the electronic documents on a rolling basis.

g. The September 15, 2010 deadline for the production of electronic documents is contingent on the absence of any unforeseen or unexpected circumstances.

During the May 27, 2010 hearing, the Court also addressed the Lottery's motion for a protective order. The Court GRANTED the Lottery's motion and ordered that the parties submit a proposed protective order for the Court's approval. In a separate filing, the Lottery, the United States, and the Defendants shall submit a proposed protective order complying with the Lottery's motion and the Court's rulings during the May 27, 2010 hearing.

ENTERED this 14th day of June, 2010.

  
John T. Copenhaver, Jr., Judge  
United States District Judge

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